In the Supreme Court of the United States

No. 422.
OCTOBER TERM, 1964.

FEDERAL TRADE COMMISSION,
Petitioner,
vs.
CONSOLIDATED FOODS CORPORATION,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

MOTION OF TRABON ENGINEERING CORPORATION, THE FRANK D. JOHNSON COMPANY AND WAYNE G. RITTER, d.b.a. RITTER ENGINEERING COMPANY, FOR LEAVE TO FILE BRIEF AMICUS CURIAE.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Trabon Engineering Corporation, The Frank D. Johnson Company and Wayne G. Ritter, d.b.a. Ritter Engineering Company, respectfully move the Court for leave to file the attached brief *amicus*. The Solicitor General of the United States has consented to such filing on behalf of the Petitioner. The attorneys for the Respondent have declined to give such consent.

Trabon Engineering Corporation (hereinafter "Trabon") is an Ohio corporation with its principal place of business at Solon, Ohio. Trabon is a small, privately held, independently owned company whose principal business

is the manufacture, sale and resale of heavy industrial centralized lubricating systems and accessories and auxiliary devices therefor..

The Frank D. Johnson Company (hereinafter "Johnson") is an Ohio corporation with its principal place of business at Solon, Ohio. Johnson is a distributor of Trabon's products.

Wayne G. Ritter is a resident of Pittsburgh, Pennsylvania, residing at 30 Glen Ridge Lane. Under the name Ritter Engineering Company, he is a distributor of Trabon's products.

Trabon, Johnson and Ritter are plaintiffs in *Trabon Engineering Corporation, et al. v. Eaton Manufacturing Company,* No. C 62-882, a private antitrust suit pending in the United States District Court for the Northern District of Ohio, Eastern Division. That action was filed on February 19, 1962 and is currently in the discovery stage. No trial date has been set. A copy of the Complaint in this case is attached to the Brief as Appendix A.

The interest of Trabon, Johnson and Ritter as *amicus curiae* is founded in the close parallel between the question presented to the Court in the Petition for Writ of Certiorari and the main issue of their pending case. The action of the Court on that Petition could have a significant impact on their pending litigation.

Trabon, Johnson and Ritter feel, as does the Solicitor General, that the instant case presents questions of substantial importance in the enforcement of Section 7 of the Clayton Act which warrant review by the Court. Moreover, the moving parties maintain that the case presents questions of particular importance to the enforcement of Section 7 of the Clayton Act by private litigants.

The parties herein are properly concerned with establishing their positions in this case. They respectfully

request that the Court, in considering the Petition for Writ of Certiorari, also give consideration to the other aspects of the problem, which touch on private antitrust actions by small corporations and individuals. The attached brief is submitted in hope that it will assist the Court so to do.

Respectfully submitted,

BRUCE GRISWOLD,
CHARLES B. GORDON,
RICHARD J. CUSICK, JR.,
TOM FORD,

Attorneys for Trabon Engineering Corporation, The Frank D. Johnson Company and Wayne D. Ritter, d.b.a. Ritter Engineering Company, as amicus curiae.

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September 25, 1964.

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INTEREST OF AMICUS CURIAE.

The interest of Trabon Engineering Corporation, The Frank D. Johnson Company and Wayne G. Ritter, d.b.a. Ritter Engineering Company, as *amicus curiae* is set forth in their motion for leave to file this brief *amicus*, to which motion this brief is annexed, and in Appendix A hereof.[1]

[1] Appendix A is a copy of the Complaint filed by the moving parties in the United States District Court for the Northern District of Ohio, Eastern Division.

SUMMARY OF ARGUMENT.

In addition to the cases and investigations of the Department of Justice and the Federal Trade Commission, private litigation involving reciprocity-creating mergers is pending. Establishment of the legal principles governing mergers of the type involved in this case will have a substantial impact on private enforcement of Section 7 of the Clayton Act [2] and will serve as guidelines to businessmen contemplating merger activity.

REASONS FOR GRANTING THE WRIT.

Much has been written recently on the subject of reciprocity.[3] While there is some difference of opinion as to its prevalence, there is little doubt about its effect. Most authors would agree with the Federal Trade Commission in the case below which succinctly stated that reciprocity

> "distorts the focus of the trader by interposing between him and the traditional competitive factors of price,

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[2] 64 Stat. 1125 (1950), 15 U. S. C. § 18 (1958), amending 38 Stat. 731 (1914).

[3] Ammer, *Realistic Reciprocity*, 40 Harv. Bus. Rev., 116 (1962); *Back Scratching Deals Raise Antitrust Ire*, Business Week, Feb. 9, 1963, p. 45; *Conglomerate Mergers Under Section 7 of the Clayton* Act, 72 YALE L. J. 1265 (1963); Donnem, *The Conglomerate Merger and Reciprocity*, 8 ANTITRUST BULL. 283 (1963); Edwards, *Conglomerate Bigness as a Source of Power*, in BUSINESS CONCENTRATION AND PRICE POLICY 331 (1955); Handler, *Emerging Antitrust Issues: Reciprocity, Diversification and Joint Ventures*, 49 VA. L. REV. 433 (1963); Harsha, *The Conglomerate Merger and Reciprocity—Condemned by Conjecture*, 9 ANTITRUST BULL. 201 (1964); Hausman, *Reciprocal Dealing and the Antitrust Law*, 77 HARV. L. REV. 873 (1964); *Reciprocity, A Dilemma for Purchasing Agents*, Electrical World, September 24, 1962, p. 45; *Reciprocity Smirks Behind the Sales Smile*, Chemical Week, November 22, 1958, p. 38; Stocking and Mueller, *Business Reciprocity and the Size of Firms*, 30 J. OF BUS. OF THE UNIV. OF CHICAGO 73 (1957); Teeple, *The P. A. Faces Reciprocity*, Purchasing, January 1955, p. 81.

quality, and service an irrelevant and alien factor which is destructive of fair and free competition on the basis of merit." [4]

Because it is essentially an anti-competitive practice, actual reciprocity has been enjoined by the Federal Trade Commission.[5]

There are several different types of reciprocity, but one of the most insidious forms is that presently before the Court on this Petition—that is, reciprocity which is injected into a market by a conglomerate's acquisition of a small producer in a concentrated industry. This situation is best illustrated by the following example. A^1, A^2, A^3 and A^4 are small enterprises of relatively equal size engaged in the manufacture and sale of product X, which is relatively low in cost and sold only to basic industry O. The four companies compete with each other on the basis of price, quality and service. This market structure is disturbed and its balance shifted, however, when B, a large multi-product firm and an important customer of industry O, decides further to diversify by acquiring A^1. Immediately the market structure becomes asymmetrical. There are now three small companies and one giant conglomerate.

The changed market structure produces the following effects:

(1) It creates a protected market for the A^1 division of B insofar as those members of industry O are concerned who were previously purchasing goods from A^1. Existing markets are thus illegally sheltered from competition.

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[4] FTC Docket 7000 (1962), CCH Trade Reg. Rep. Par. 16,182 at 20,977.

[5] *Waugh Equipment Co.*, 15 F. T. C. 232 (1931); *Mechanical Manufacturing Co.*, 16 F. T. C. 67 (1932); *California Packing Co.*, 25 F. T. C. 379 (1937).

(2) It operates as an inducement to other members of industry O to buy goods from the A^1 division of B when those companies are desirous of selling to B.

(3) It gives B a vehicle for the use of business coercion, express or implied, to induce other members of industry O to purchase goods from its A^1 division. Reciprocity may thus be used as a weapon.

The relationships arising out of the hypothetical acquisition are beneficial to B but detrimental to A^2, A^3 and A^4. Since they are no longer equally able to compete for the sales to O industry, competition has been substantially lessened.

The trend towards conglomerates has accelerated. A recent study by the Federal Trade Commission indicates a continuing growth in the number of large multi-product firms and a corresponding decrease in large single-product firms.[6] Merger-created reciprocity, on the other hand, is

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[6] Harrison F. Houghton, Assistant to the Director, Bureau of Economics, Federal Trade Commission, stated before the Subcommittee on Antitrust and Monopoly of the Senate Committee on the Judiciary, September 9, 1964, that the activities of the supposedly 1000 largest industrial corporations in 1950 had recently been compared with corporations in that class in 1962. The comparison was based on what is known as the five-digit Standard Industrial Classification products. According to this study, in 1950 there were 78 single-product corporations while in 1962 this number had decreased to 49. Similarly, in 1950, 354 companies produced two to five such products, and in 1962 there were only 223. As might be expected, this decrease was followed by a substantial increase in multi-product firms. The survey shows that in 1950 there were 432 companies producing 6 to 15 five-digit products, but 477 produced that many in 1962. Most significant was the area of 16 to 50 five-digit products. In 1950 there was a total of 128 corporations selling such products and in 1962 this number had increased to 236. Carrying this analysis of the 16 to 50 five-digit products further, the survey concentrated on the performance of the 1000 largest companies in 1950 that were also within this classification in 1962.

(Continued on following page)

not susceptible to numerical tabulation. We do know that because of its size and diversification, the conglomerate structure lends itself to reciprocal relationships with or through its many suppliers.[7] What evidence there is, therefore, suggests that merger-created reciprocity is a growing problem in the economy.

The Solicitor General has informed the Court that there are several pending Court cases and investigations being carried on by the Department of Justice and the Federal Trade Commission which concern merger-created reciprocity. He feels, and we agree, that these cases raise new and important questions concerning the legality under Section 7 of mergers which create the danger of foreclosing a market through reciprocity.

We invite the Court's attention to the fact that there is pending private antitrust litigation involving acquisitions which have introduced reciprocity into a market. The establishment of the principles governing the validity of this type of merger will have an important bearing on private actions. Furthermore, the business community has become aware of litigation involving this question and businessmen contemplating merger activity would welcome guidelines concerning the significance of reciprocity under the antitrust laws.

(Continued from preceding page)

Here again, there was a significant increase in 16 to 50 five-digit product classification as compared with 1950, as follows:

Class	1950	1962
184 of top 200 in 1962	77	94
220 of next 300 in 1962	27	67
233 of next 500 in 1962	9	22

Recent Growth of Conglomerate Corporations, F. T. C. Release, September 9, 1964.

[7] Stocking and Mueller, *Business Reciprocity and the Size of Firms*, 30 J. OF BUS. OF THE UNIV. OF CHICAGO 73, 76-77 (1957).

This Court has found a Congressional intent that private self-interest be used as a means of enforcement of the antitrust laws.[8] Private litigation has had a significant influence on the enforcement of the antitrust laws of this country.[9] Although many obstacles must be overcome,[10] the private litigant is important in the enforcement of Section 7 of the Clayton Act because he is usually the first to recognize the damaging effects of a merger or acquisition.[11]

In the present case, the Court of Appeals disturbed none of the findings of the Commission to the effect that the power of reciprocity was introduced into the market through the merger. The Court held, however, that the post-acquisition evidence rebutted the probability of anti-competitive effect.[12] Such a doctrine can effectively frus-

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[8] *Bruce's Juices, Inc. v. American Can Company*, 330 U. S. 743, 751 (1947).

[9] Actions by persons injured are permitted by 38 Stat. 731 (1914), 15 U. S. C. § 15 (1958). It has been stated that the private antitrust suit is part and parcel of the enforcement machinery under the antitrust laws. *P. W. Husserl, Inc. v. Simplicity Pattern Co.*, 191 F. Supp. 55, 60 (S. D. N. Y. 1961), *rev'd on other grounds*, 298 F.2d 867 (2nd Cir. 1962). And that the section was designed to foster and stimulate the interest of private persons in maintaining a free and competitive economy. *Klor's, Inc. v. Broadway-Hale Stores, Inc.*, 255 F.2d 214, 217 (9th Cir. 1958), *rev'd on other grounds*, 359 U. S. 207 (1959). See also the comments of Mr. Lee Leovinger, a former Assistant Attorney General in charge of the Antitrust Division, Department of Justice in *Private Action—The Strongest Pillar of Antitrust*, 3 ANTITRUST BULL. 167, 168 (1958), wherein he states that "[a]s between enforcement action by government agencies and by private parties, there are a number of reasons to believe that action by private parties is both more desirable and more effective."

[10] Such as difficulties incurred in securing discovery, and the usually high cost of this litigation.

[11] Thus truly acting upon the merger or acquisition in its incipiency. *Brown Shoe Co. v. United States*, 370 U. S. 294, 323 & n. 39 (1962). See note 9, *supra*.

[12] 329 F.2d 623, 626 (7th Cir. March 24, 1964).

trate private actions for, unlike the government, the private litigant is confronted with a statute of limitations.[13] Under the rule announced by the Seventh Circuit, the conglomerate need only suppress its reciprocity power for a few years after the acquisition and the private remedy provided by Congress will be unavailable.

If private self-interest is to play an effective part in enforcing Section 7, injured private parties must be afforded effective remedies. When menaced by a reciprocity-creating merger, a businessman should be able to test its legality promptly rather than having to wait years for subsequent developments which are under the control of the conglomerate. Important to an effective remedy, therefore, is the establishment of the principles governing the emphasis to be given post-acquisition evidence in determining the legality of reciprocity-creating mergers. Is such evidence, if negative, to be given determinative weight with eyes closed to the fact that the reciprocity power remains and may be implemented as soon as a judicial remedy has been denied to competitors? If the Seventh Circuit is correct here in giving decisive emphasis to post-acquisition evidence, private resistance to reciprocity-creating mergers will be discouraged. But, if the Court of Appeals is incorrect, a pronouncement to that effect will stiffen private resistance to such mergers.

The Court is not being called upon here to consider long-standing reciprocal relationships which may have developed between buyers and sellers over the years. Nor is the Court asked to declare all reciprocity illegal. We only ask the Court to remember the plight of the small businessman. When a giant conglomerate invades his market by acquisition, he is powerless to compete against the reciprocal relationships which can arise from its

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[13] 69 Stat. 283 (1955), 15 U. S. C. § 15b (1958).

immense financial and buying power. Faced with this circumstance, he may sell, merge or liquidate. For, if he remains in business at all, it will be at the sufferance of his conglomerate competitor.

CONCLUSION.

This case presents questions of substantial importance to private litigants in the enforcement of Section 7 of the Clayton Act which warrant review by this Court. It is respectfully requested that the government's Petition for a Writ of Certiorari be granted.

Respectfully submitted,

BRUCE GRISWOLD,
CHARLES B. GORDON,
RICHARD J. CUSICK, JR.,
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Attorneys for Trabon Engineering Corporation, The Frank D. Johnson Company and Wayne G. Ritter, d.b.a. Ritter Engineering Company, as amicus curiae.

Of Counsel:
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APPENDIX A.

COMPLAINT.

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION.

TRABON ENGINEERING CORPORATION,
an Ohio corporation,
THE FRANK D. JOHNSON COMPANY,
an Ohio corporation,
and
WAYNE G. RITTER, d.b.a. RITTER ENGINEERING COMPANY,
Plaintiffs,

vs.

EATON MANUFACTURING COMPANY,
an Ohio corporation,
Defendant.

C. A. No. C 62-882.

Plaintiffs complain and allege as follows:

JURISDICTION AND VENUE.

1. This action is instituted under Sections 4 and 16 of the Clayton Act (35 U. S. C., Sections 15 and 26) and alleges violation of Sections 1 and 2 of the Sherman Act (15 U. S. C., Sections 1 and 2) and Section 7 of the Clayton Act (15 U. S. C., Section 18) and requests award of damages to plaintiffs and other relief.

2. Plaintiffs, Trabon Engineering Corporation and The Frank D. Johnson Company, both maintain offices and transact business within the Northern District of Ohio.

Plaintiff Wayne G. Ritter resides in Pittsburgh, Pennsylvania. Defendant, Eaton Manufacturing Company, maintains offices and transacts business within the Northern District of Ohio.

PARTIES; ALSO PLAINTIFF'S BUSINESS.

3a. Plaintiff, Trabon Engineering Corporation, is an Ohio corporation, with its principal place of business at Solon, Ohio. Trabon is a privately held independently owned company whose principal business is the manufacture, sale and resale of heavy industrial centralized lubricating systems (more fully identified later in this complaint) and accessories and auxiliary devices therefor.

3b. Plaintiff, The Frank D. Johnson Company, is an Ohio corporation, with its principal place of business at Solon, Ohio. The Frank D. Johnson Company is a distributor of Trabon Engineering Corporation's products.

3c. Plaintiff, Wayne G. Ritter, is a resident of Pittsburgh, Pennsylvania, residing at 30 Glen Ridge Lane. Wayne G. Ritter is a distributor of Trabon Engineering Corporation's products.

4. Defendant, Eaton Manufacturing Company (hereinafter "Eaton") is an Ohio corporation, with its principal offices at 739 East 140 Street, Cleveland, Ohio.

5. Whenever in this complaint reference is made to any act, deed or transaction on the part of the defendant, such allegation shall be deemed to mean that the officers, directors, agents, or employees of the defendant authorized, ordered, or did such act, deed, or transaction for, or on behalf of, the defendant while actively engaged in the management, direction and control of its affairs.

CERTAIN MERGED ENTERPRISES.

6. In 1958 and for many years prior thereto, The Cleveland Worm & Gear Company was an Ohio corporation. In 1958 and for many years prior thereto The Farval Corporation was an Ohio corporation and a wholly owned subsidiary of The Cleveland Worm & Gear Company. During December 1958 or January 1959, Eaton caused to be organized a new wholly owned subsidiary which acquired all the assets of The Cleveland Worm & Gear Company and its wholly owned subsidiary The Farval Corporation. Such acquisition occurred on January 31, 1959. During 1959 the newly organized subsidiary of Eaton was dissolved and the enterprises of The Cleveland Worm & Gear Company and The Farvel Corporation continued to operate under the names "Cleveland Worm & Gear" and "Farval," respectively, but as separate divisions of Eaton. As used hereinafter in this complaint, the names "Cleveland Worm & Gear" and "Farval" include the respective separate corporate entities existing in 1958, the respective operating divisions of Eaton existing at the end of 1959, and any respective corresponding intervening transitory entities.

7. Whenever in this complaint reference is made to any act, deed, or transaction on the part of Cleveland Worm & Gear, such allegation means that the officers, directors, agents, or employees of Cleveland Worm & Gear authorized, ordered, or did such act, deed, or transaction, for, or on behalf of, Cleveland Worm & Gear, while actively engaged in the management, direction, and control of its affairs. Whenever in this complaint reference is made to any act, deed, or transaction on the part of Farval, such allegation means that the officers, directors, agents, or employees of Farval authorized, ordered, or did such

act, deed, or transaction, for, or on behalf of, Farval, while actively engaged in the management, direction, and control of its affairs.

NATURE OF LINE OF COMMERCE; ALSO DEFENDANT'S BUSINESS.

8. Heavy industrial centralized lubricating systems automatically supply oil or grease from a central reservoir or reservoirs to the numerous sites requiring lubrication on heavy industrial machinery or equipment (for example, steel rolling mills). The lubricating systems for heavy industrial applications are intended to operate reliably over protracted periods of time of weeks or months with minimal care and supervision, and over such protracted periods to continue to supply lubricant at the overall rate demanded by the machinery or equipment and to maintain a selected proportioning of the lubricant among the various lubrication sites according to their several demands. Heavy industrial centralized lubricating systems are sold to makers and users of industrial machinery or equipment throughout the United States. Annual sales of such systems including accessories and auxiliary devices have amounted on an industry-wide basis to several millions of dollars annually since well prior to 1958. A great proportion of sales are and have been made, both nationally and regionally, to makers or users of steel manufacturing and shaping machinery and equipment.

9. Users of steel manufacturing and shaping equipment on which heavy industrial centralized lubricating systems are employed represent both leading and secondary steel companies. Such steel manufacturing and shaping equipment is made by suppliers or contractors to the order of the steel companies under formal or informal

specifications and standards established or accepted by the steel companies.

10. Farval is a major manufacturer of heavy industrial centralized lubricating systems.

11. Eaton ranks among the 200 largest industrial corporations in the United States in terms of sales. In 1960 Eaton's sales amounted to about 189 million dollars. Eaton has embarked on a planning program with an announced goal of 400 million dollars annual sales by the end of 1963. Eaton describes this program as calling for continuing corporate acquisitions. From 1954 through 1961 Eaton acquired at least the following companies, making the products indicated:

Spring Perch Co., Inc., Lackawanna, N. Y. (chassis springs, used principally for trucks)

Automotive Gear Works, Inc., Richmond, Ind. (gears for farm equipment, general and industrial applications)

Fuller Manufacturing Co., Kalamazoo, Mich., and subsidiary, Shuler Axle Co., and division, Unit Drop Forge (axles, transmissions, dies, and forgings)

Cleveland Worm & Gear Co., and subsidiary. Farval Corp., Cleveland, Ohio (worms and gears for automotive and industrial drives, heavy industrial centralized lubricating systems)

American Metal Products Co., Detroit, Mich. (tubular and stamped steel assemblies, etc.)

Dearborn Marine Engines, Inc., Madison Heights, Mich. (inboard engines for pleasure boats)

Dill Manufacturing Co., Cleveland, Ohio (tire valves, tire and tube repair accessories, etc.)

Additional manufacturing companies have been acquired by Eaton since 1961.

12. Eaton is a large purchaser of steel. Each of the acquired companies recited in the preceding paragraph continues to be operated by Eaton as a manufacturing division using steel or steel shapes as its principal manufacturing material. Both prior to and following the aforesaid acquisitions, steel or steel shapes have been the principal manufacturing material used by Eaton.

OFFENSES AND EFFECTS ALLEGED.

13. Eaton, Cleveland Worm & Gear, and Farval contracted, combined, and conspired in restraint of commerce in violation of Section 1 of the Sherman Act in the manner more particularly set forth in paragraph 16 hereof, and such contracting, combining, and conspiring are continuing.

14. Eaton, Cleveland Worm & Gear, and Farval monopolized and are monopolizing, attempted to monopolize and are attempting to monopolize, and combined and conspired and are continuing combining and conspiring to monopolize trade or commerce in the manner more particularly set forth in paragraph 17 hereof.

15. The effect of Eaton's acquisition of Cleveland Worm & Gear and Farval, as above alleged, may be, and was and is, substantially to lessen competition, and the aforesaid acquisition tended and tends to create a monopoly, and has created and is creating a monopoly, as more particularly set forth in paragraph 18 hereof.

16. Eaton, Cleveland Worm & Gear, and Farval contracted and conspired in restraint of trade or commerce in heavy industrial centralized lubricating systems and particularly in the steel industry national and regional markets for heavy industrial centralized lubricating systems, by uniting and combining Farval with Eaton as above re-

cited. By such combination Eaton, Cleveland Worm & Gear, and Farval accomplished and there continues to be accomplished, a restraint of trade or commerce in heavy industrial centralized lubricating systems, and particularly national and regional markets in the steel industry for heavy industrial centralized lubricating systems, in that, on the sheer strength of Eaton's great and growing buying power in the steel market, Eaton acquired and now has the power to motivate steel companies to purchase or cause their equipment suppliers to purchase from Farval on a basis other than solely quality, price, sales service and like competitive considerations, and this power was and is being successfully exercised against and to the damage of the public interest and to the damage of plaintiffs, whereby plaintiffs lost and are losing customers and sales, and otherwise suffered and are suffering injury to their business and property.

17. By the acts alleged in the preceding paragraphs, Eaton, Cleveland Worm & Gear, and Farval have combined and conspired to monopolize, have monopolized and are monopolizing, and have attempted to monopolize and are attempting to monopolize, trade or commerce in heavy industrial centralized lubricating systems, and particularly in the steel industry national and regional markets for heavy industrial centralized lubricating systems.

18. By uniting and combining Farval with Eaton as above recited, Eaton, Cleveland Worm & Gear, and Farval accomplished, and there continues to be accomplished, a substantial lessening of competition in the steel industry market for heavy industrial centralized lubricating systems; and by such uniting and combining there tends to be created a monopoly in the steel industry market for heavy industrial centralized lubricating systems, in that,

on the sheer strength of Eaton's great and growing buying power in the steel market, Eaton acquired and has continued to possess the power to motivate steel companies to purchase or cause their equipment suppliers to purchase from Farval on a basis other than solely quality, price, sales, service and like competitive considerations; and this power has been and is being successfully exercised against and to the damage of the public interest and to the damage of plaintiffs, whereby plaintiffs lost and are losing customers and sales, and have been and are being foreclosed from a line or lines of commerce, and have been and are being otherwise damaged in their business and property.

19. The merger of Farval with Eaton as above recited greatly enhanced and enhances the likelihood that reciprocity (the practice of reciprocal buying—forcing or attracting reciprocal purchases from Farval by Eaton's steel suppliers on the strength of Eaton's buying power) would be and will be practiced and imposed by Eaton on the steel industry in furtherance of the conspiracy alleged hereinabove and so as to stifle competition in the steel industry market for heavy industrial centralized lubricating systems in a manner injurious to the public. Such reciprocity has been and is being practiced and imposed by Eaton in such market and in furtherance of the conspiracy, causing plaintiffs to lose sales and customers and suffer other damage to their business and property. The practice of reciprocity and the anticompetitive effects thereof and injury to the public interest and to plaintiffs' business and property have been and are inherent in the corporate structure created by the merger.

20. By the foregoing acts of Eaton and/or Cleveland Worm & Gear and/or Farval as above alleged, plaintiffs have been damaged in their business and property and continue to be so damaged.

PRAYER.

1. That the Court adjudge and decree that defendant has unreasonably restrained trade or commerce in violation of Sections 1 and 2 of the Sherman Act and that the merger of Farval with defendant violates Section 7 of the Clayton Act, and that such violations have damaged plaintiffs and the public.

2. That the Court adjudge and decree that defendant, and its officers, directors, agents, employees, and those in any manner in control thereof, shall cause defendant to divest itself, within a set period, of all assets obtained through acquisition of Farval, together with subsequent additions thereto if any, in such a manner as to maintain Farval as a going concern and to terminate any and all identification in interest or control between defendant and Farval, and between those identified with either of them.

3. That plaintiffs be awarded damages heretofore and hereafter accruing, and that plaintiffs recover threefold their total damages.

4. That plaintiffs recover their costs and reasonable attorney's fees.

5. That plaintiffs have such other, further, and different relief as the nature of the case may require and as the Court may deem just.

TRABON ENGINEERING CORPORATION,
THE FRANK D. JOHNSON COMPANY, AND
WAYNE G. RITTER, d.b.a. RITTER
ENGINEERING COMPANY.

CERTIFICATION.

I, BRUCE GRISWOLD, one of the attorneys for Trabon Engineering Corporation, The Frank D. Johnson Company and Wayne G. Ritter, d.b.a. Ritter Engineering Company, *amicus* herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 25th day of September, 1964, I served copies of the foregoing Motion for Leave to File and the annexed Brief *Amicus* in the captioned cause by causing to be mailed a copy thereof with first class or air mail postage prepaid (as appropriate) as follows:

ARCHIBALD COX, ESQUIRE,
Solicitor General of the United States,

WILLIAM H. ORRICK, JR., ESQUIRE,
Assistant Attorney General,

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